



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MAHON

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ATTORNEY GENERAL

Railroad Commission of Texas  
Austin, Texas

Gentlemen:

Opinion No. 0-3824

Re: Member of Legislature holding  
an office in the Executive  
Department of the State  
government, which office was  
created by the Legislature of  
which the Legislator was a  
member.

We have for acknowledgement your letter of July 28, 1941,  
which reads as follows:

"May a member of the Legislature lawfully accept and  
hold an office in the Executive Department of the State  
Government, in an administrative capacity, where the money  
to pay the salary incident to the office was appropriated  
by a Legislature of which said person was an active and  
participating member, - the office having been created and  
established, so far as a creation and establishment ever  
came about, by said same Legislature of which said member  
was an active and participating member?"

You refer us to no particular fact situation, but it seems the  
question which you desire to ask may be stated as follows:

"May a member of the Legislature lawfully accept and  
hold an office in the Executive Department of the State  
Government, which office was created by the Legislature of  
which said Legislator was a member?"

Article 3, Section 18, of the State Constitution, reads in  
part as follows:

"No Senator or Representative shall, during the  
term for which he may be elected, be eligible to any  
civil office of profit under this State, which shall  
have been created, or the emoluments of which may  
have been increased during such term; . . ."

It is apparent from a casual reading of this section of the Constitution that, during the term for which the Legislator may be elected, he cannot accept and hold a civil office of profit under this State, if such office has been created, or if the emoluments of the office shall have been increased, during the term for which the Legislator was elected. Conversely, his ineligibility, in such circumstances, extends throughout the term for which he has been elected, but not beyond that term.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By: /s/ R. W. Fairchild  
R. W. Fairchild  
Assistant

RWF:fs:ds

APPROVED AUG 1, 1941

/s/ Grover Sellers

FIRST ASSISTANT  
ATTORNEY GENERAL

APPROVED OPINION  
COMMITTEE BY /s/ B.W.B.  
CHAIRMAN